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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

EQUITABLE LIFE ASSUR. SOCIETY OF UNITED STATES v. KITT'S' ADM'R.

Jan. 14, 1909.

[63 S. E. 455.]

1. Appeal and Error (§ 1005*)—Review—Credibility of Witnesses—Evidence.—So long as a witness deposes to facts which, if true, are sufficient to maintain the verdict, then the fact that his credit is impeached by an attack upon his character, or by contradictory statements—especially conflicting statements made out of court—affects only his credibility, and goes, not to his competency, but to the weight and sufficiency of his testimony, which is for the jury, and their determination thereon, after refusal of the trial court to interfere, will not be disturbed by the appellate court.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3948-3950; Dec. Dig. § 1005.* 1 Va.-W. Va. Enc. Dig. 620; 13 Id. 974.]

2. Pleading (§ 214*)—Demurrer—Effect.—Upon a demurrer, all facts properly pleaded in a declaration are taken as true.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. §§ 525-534; Dec. Dig. § 214.* 4 Va.-W. Va. Enc. Dig. 471.]

3. Insurance (§ 665*)—Action—Evidence—Sufficiency—Delivery of Policy.—In an action on a life insurance policy, evidence held sufficient to show that the company acquiesced in the delivery of the policy.

[Ed. Note.—For other cases, see Insurance, Dec. Dig. § 665.* 7 Va.-W. Va. Enc. Dig. 779.]

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

JORDAN & DAVIS v MAHONEY.

Jan. 14, 1909.

[63 S. E. 467.]

1. Frauds, Statute of (§ 109*)—Sufficiency of Writing—Nature of Memorandum—"Contract to Purchase."—Plaintiff having authorized an agent to sell land, defendants thereafter wrote to such agent to purchase the same land for them at a certain price. Plaintiff agreed with the agent to sell to defendants, and made a notation at the

*For other cases, see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

bottom of their letter, "I accept the above," which he signed. Held, that the letter was not a contract to purchase, within the statute of frauds (Code 1904, § 2840), but a mere authority to the agent, who would himself have to execute a memorandum as agent in order to make a binding contract, and plaintiff's notation of acceptance added nothing to it.

[Ed. Note.—For other cases, see *Frauds, Statute of*, Cent. Dig. § 224; Dec. Dig. § 109.* 6 Va.-W. Va. Enc. Dig. 534.]

2. *Frauds, Statute of (§ 118*)—Sufficiency of Writing—Separate Writings—Connection with Contract.*—While separate papers may be referred to to show an agreement to purchase land, they must of themselves show their relation to the written contract sued on.

[Ed. Note.—For other cases, see *Frauds, Statute of*, Cent. Dig. §§ 262-264; Dec. Dig. § 118.* 6 Va.-W. Va. Enc. Dig. 537.]

3. *Frauds, Statute of (§ 118*)—Sufficiency of Writing—Separate Papers—Connection by Internal Reference.*—A letter of defendants to plaintiff, merely stating that they would try to have their attorney examine the title to four lots when he returned, did not refer to an alleged contract by defendants to purchase the lots, so as to connect it with such contract without extrinsic evidence.

[Ed. Note.—For other cases, see *Frauds, Statute of*, Cent. Dig. §§ 262-264; Dec. Dig. § 118.* 6 Va.-W. Va. Enc. Dig. 537.]

4. *Frauds, Statute of (§ 118*)—Sufficiency of Writing—Separate Writings—Parol Evidence to Connect Writings.*—A separate writing cannot be connected by parol with a memorandum for the purchase of land, so as to make the contract sufficient within the statute of frauds.

[Ed. Note.—For other cases, see *Frauds, Statute of*, Cent. Dig. § 264; Dec. Dig. § 118.* 6 Va.-W. Va. Enc. Dig. 537.]

YOUNG et al. v. YOUNG et al.

Jan. 14, 1909. Rehearing Denied March 4, 1909.

[63 S. E. 748.]

1. *Wills (§ 590*)—Rights of devisees—Title—Real Property—Licenses.*—Only a license to sell timber passed by a will giving devisees the right to sell timber on the testator's land, and the will creates no estate or property in the timber until it is severed from the freehold.

[Ed. Note.—For other cases, see *Wills*, Cent. Dig. § 1295; Dec. Dig. § 590.* 9 Va.-W. Va. Enc. Dig. 300.]

2. *Logs and Logging (§ 4*)—Right to Cut and Remove Timber—Licenses.*—A license to cut and sell timber does not vest title in the licensee prior to the severance of the timber from the freehold.

[Ed. Note.—For other cases, see *Logs and Logging*, Cent. Dig. § 13; Dec. Dig. § 4.* 9 Va.-W. Va. Enc. Dig. 300.]

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.